

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

In Re
AMERICANWEST BANCORPORATION,

DEBTOR.

NO. CV-11-0448-LRS

CASE NO. 10-6097-PCW11

AMERIWEST BANK,

(Adv. Proc. No. 11-80039-PCW;
11-80323-PCW)

Plaintiff,

**ORDER RE REPORT AND
RECOMMENDATION AND REFERRAL TO
BANKRUPTCY COURT FOR ALL
PRETRIAL MATTERS**

STARBUCK BANCSHARES INC.,
SANDLER O'NEILL & PARTNERS,
CAPPELLO CAPITAL CORP.,

Defendant.

This matter is before the Court on Bankruptcy Judge Patricia C. William's December 5, 2011, *sua sponte* motion for withdrawal of the reference of adversary proceeding to the United States District Court for the Eastern District of Washington. (ECF No. 98 in 11-80323-PCW). The *sua sponte* Report and Recommendation was apparently transmitted to the District Court shortly thereafter. However, for reasons which are currently unknown, the case did not show up thereafter on this court's electronic calendar. None of the parties filed a response to Judge

1 William's *sua sponte* request in this Court or in the proceedings before
2 the bankruptcy court.

3 In the Report and Recommendation, the Bankruptcy Judge concluded
4 that remand under 28 U.S.C. § 1452(b) is not appropriate in this matter
5 and that a federal court should retain jurisdiction of this case for the
6 following reasons:

7 1) Cappello's claims that it is entitled to warrants
8 for shares of stock. This claim interferes with this
9 Court's Sale Order because the Order directed that
10 one hundred percent (100%) of the stock of the Bank
11 be sold to Purchaser. An issue exists whether
12 Cappello's requested relief is foreclosed pursuant
13 to the Asset Purchase Agreement and the Sale Order.
14 To the extent that Cappello seeks to challenge that
15 Sale Order, that issue should be decided by a
16 federal court.

17 2) Sandler seeks an administrative claim for
18 indemnity from the DIP. Should the DIP be found
19 liable to Sandler on that claim, this would
20 significantly impact the administration of this
21 bankruptcy proceeding. That claim may not delay or
22 impact the plan confirmation process, but will
23 result in a delay of the distribution of funds to
24 creditors under any confirmed plan.

25 3) Cappello seeks to recover, from Sandler, the fees
26 the DIP paid to Sandler, which fees have been
approved by this Court. Such requested relief raises
issues as to the effect of this Court's Order. A
federal court should determine this issue.

ECF No. 98, at 9 in 11-80323-PCW.

21 The Bankruptcy Judge recommended that the District Court withdraw
22 the reference as to this adversary proceeding. The Bankruptcy Judge
23 further recommended that the parties file any pleadings regarding the new
24 adversary proceeding with the District Court.

25 The Bankruptcy Court considered, and so must this Court, the recent
26 decision of the United States Supreme Court *Stern v. Marshall*, --- U.S.

1 ----, 131 S.Ct. 2594, 180 L.Ed.2d 475 (2011), which held that bankruptcy
2 judges do not have Article III constitutional authority to enter final
3 judgment under 28 U.S.C. § 157(b)(2)(C) on a debtor's state-law
4 counterclaim which is not resolved in the process of ruling on the
5 creditor's proof of claim. 131 S.Ct. 2594, 2608. The Bankruptcy Court
6 noted the existence of state law counterclaims by AmericanWest Bank in
7 the adversary proceeding at issue, requiring final judgment to be entered
8 by this Court. As a consequence of the *Stern* holding, this Court must
9 determine whether the reference should be withdrawn, either because the
10 law compels withdrawal or, if not, whether withdrawal is warranted in the
11 exercise of this court's discretion.

12 While *Stern* appears to prevent the bankruptcy court from entering
13 a final judgment on the counterclaim(s) at issue here, this Court is not
14 prepared to find that *Stern* precludes this Court from allowing pretrial
15 proceedings to be handled by means of a Report and Recommendation from
16 the Bankruptcy Judge. As to permissive withdrawal under 28 U.S.C. §
17 157(d), the Ninth Circuit has held that a district court should consider
18 several factors, including "the efficient use of judicial resources,
19 delay and costs to the parties, uniformity of bankruptcy administration,
20 the prevention of forum shopping, and other related factors" in the
21 exercise of its discretion. *Sec. Farms v. Int'l. Bhd. of Teamsters (In*
22 *re Security Farms)*, 124 F.3d 999, 1008 (9th Cir.1997).

23 This Court has reviewed the *Stern* decision; the Bankruptcy Judge's
24 *sua sponte* motion; supplementary letters¹ from Defendant Cappello Capital
25

26 ¹The letters were sent to ascertain the status of the pending motion

1 Corp., Defendant AmericanWest Bank, and Defendant Sandler O'Neill &
2 Partners, L.P.; and the Bankruptcy Court's Report and Recommendation.
3 Based on the foregoing reasons, the Court finds that the motion to
4 withdraw reference should be granted in the exercise of discretion and
5 the Bankruptcy Court's Report and Recommendation should be adopted.

6 The Court further notes that the Bankruptcy Court has already been
7 highly involved in this case, and is very familiar with the facts and
8 issues. Due to a pending summary judgment motion filed before the
9 Bankruptcy Court, this Court will refer all pretrial matters, including
10 the pending summary judgment, to the Bankruptcy Court. The Bankruptcy
11 Court will then *sua sponte* supplement its Report and Recommendation after
12 all pending pretrial and dispositive motions have been determined.
13 Proceeding in this fashion will speed the bankruptcy to resolution and
14 conserve scarce resources of the parties and of both courts.

15 **IT IS THEREFORE ORDERED BY THE COURT** that the Bankruptcy Court's
16 Motion to Withdraw Reference and to Transfer to the Federal District

17 _____
18 to withdraw reference pending in the Bankruptcy Adversary Action ECF Nos.
19 98, 99. Local Rule 7(i) expressly encourages the parties to a pending
20 motion to contact the courtroom deputy to inquire as to the status on
21 motions pending for more than 30 days. The parties informally requested
22 withdrawal of reference, but only after all pretrial matters, including
23 pending summary judgment motions, are completed. The parties also agreed
24 that this Court should handle trial of this action, if the action goes
25 forward.
26

1 Court for the Eastern District of Washington (ECF No. 1 filed in CV-11-
2 448-LRS) is **GRANTED** with respect to **Adversary Proceeding No. 11-80323-PCW**
3 and this Court shall henceforth exercise jurisdiction over trial of this
4 matter. The Bankruptcy Court shall supplement its report and
5 recommendation after all pretrial matters, including pending dispositive
6 motions, have been determined.

7 **IT IS FURTHER ORDERED**, subject to the foregoing, that the Bankruptcy
8 Court's Report and Recommendation is **ADOPTED**.

9 **IT IS SO ORDERED**. The District Court Executive is directed to enter
10 this order, provide copies to counsel and the Clerk of the Bankruptcy
11 Court.

12 **DATED** this 3rd day of February, 2012.

13
14 ***s/Lonny R. Suko***

15

LONNY R. SUKO
United States District Judge